

REMARKS/ARGUMENTS

Claims 1, 4, 5, 7 to 9, 11 to 13, 15, 17 to 22, 55 and 57 to 67 remain in this application. Claims 2, 3, 6, 10, 14, 16, 23 to 54 and 56 are cancelled, without prejudice.

In paragraph 2 on page 2 of the Office Action mailed January 5, 2006 (“the Office Action”), the Examiner states that claim 38 is directed to an invention that is independent or distinct from the invention originally claimed and that the originally presented invention has been constructively elected. He then states that claims 54 to 68 are withdrawn from consideration as being directed to a non-elected invention.

It is believed that the Examiner intended to withdraw claims 38 and claims 39 and 41, which depended from claim 38. Therefore, claims 38, 39 and 41 have been canceled. Claim 54 was previously canceled. No claim 68 has been presented. Claims 55 to 61 and 65 to 67 remain in the application as they dependent directly or indirectly on claim 1, the elected surface covering or surface covering component species. Claims 62 and claims 63 and 64, which depend on claim 62, are directed to a surface covering or surface covering component and not to a freestanding film. Therefore, it is believed that the restriction requirement has been overcome.

In paragraph 4 on page 3 of the Office Action, the Examiner rejected all of the claims under 35 U.S.C. 112, first paragraph, as containing new matter, specifically the phrase “thermoset top coat” in claims 1, 4, 5, 8, 9, 11, 38, 55, 59 to 61 and 63 to 65, and the phrases “freestanding coated film” and “freestanding film” in claim 38. The phrase “thermoset top coat” also appears in claim 58. Claim 38 has been canceled.

With respect to the phrase “thermoset top coat,” the “polyester (meth)acrylates, polyurethane (meth)acrylates, polyesterurethane acrylates, acrylated epoxy,

polyepoxides” set forth on page 6, lines 14 and 15, of the present specification are examples of thermoset top coats. Further “thermoset top coat” is synonymous with “crosslinked top coat.” Support for “crosslinked” is found at page 6, line 16, and page 10, line 26. Therefore, the claims have been amended to refer to “crosslinked top coat” rather than “thermoset top coat.” Therefore, the Section 112 rejection has been overcome.

At the top of page 6, in paragraph 5, of the Office Action, the Examiner objects to the phrase “the first region distal the exposed surface” in claim 64 and asks for correction or clarification of the term “distal.” “Distal” is defined in Webster’s Unabridged Dictionary to mean “remote from the point of attachment or origin.” “Remote from the point of origin (the exposed surface) is what was intended in claim 64. However, to avoid at confusion, “distal” has been amended to “opposite.” Therefore, the objection of claim 64 has been overcome.

In paragraph 7 on page 4 of the Office Action, the Examiner rejects claims 1, 2, 5 and 6 as being anticipated by Schmidle et al. US Patent No. 4,273,819 (Schmidle). Claims 2 and 6 were previously canceled. The carryover sentence on pages 4 and 5 of the Office Action states the “wear layer comprises various constituents and controlling agents which vary in ranges (column 6, lines 20-30) where the wear layer comprises thermoset polymeric materials derived from polymerization of materials.” The “controlling agents” referred by Schmidle in the cited passage are “viscosity controlling agents.”

Claim 1 has been amended to require an initiator with a different concentration in a second region of the top coat from the concentration in a first region of the top coat.

Support for this amendment is found at page 4, lines 11 to 26, and column 5, lines 8 to 10, for example. At column 7, lines 65 to 67, of Schmidle states the “free radical polymerization initiator or catalyst is included substantially uniformly in the resinous wear layer 16.” (Emphasis supplied.) Therefore, Schmidle teaches away from amended claim 1, and therefore claim 1 and claims 5, 7, 8, 55, 57 to 61 and 65 to 67, which depend directly or indirectly on claim 1, are allowable over Schmidle.

Claims 4, 9 and 62 require the top coat to comprise a flatting agent. Claims 11 to 13, 15, 17 to 22, 63 and 64 depend directly or indirectly on claim 62. Attorney for Applicants notes that claims 4, 9 and 62 have not been rejected over Schmidle. However, near the bottom of page 4 of the Office Action, the Examiner states that “Schmidle further discloses the composition is relatively flat (comprises flatting agent)” and refers to column 3, lines 24 to 36, and column 9, lines 41 to 45.

Schmidle does not teach or suggest flatting agents or particularly finely divided particles. The cited passages of Schmidle do not teach flatting agents in the top coat. Column 3, line 24 to 36, of Schmidle describes the backing sheet material 10 and not the wear layer 16. In fact, the “relatively flat, fibrous backing sheet material 10” describes the backing sheet material to be physically relatively flat (versus embossed) and not the gloss level of the backing sheet material.

At column 9, lines 41 to 45 et seq., Schmidle discusses mechanically embossing the wear layer 16 to obtain a flat, dead or dull mat finish. There is no teaching or suggestion of a flatting agent of finely divided particulate.

Claims 4, 9 and 62 have been amended to specify that the flatting agent is finely divided particles. Support for these amendments is found at page 10, line 6, of the

present specification. Since Schmidle does not teach or suggest finely divided particles, claims 4, 9 and 62, and claims 11 to 13, 15, 17 to 22, 63 and 64, dependent there on, are allowable over Schmidle.

Attorney for Applicants respectfully maintains that all of the claims remaining in the application are in condition for allowance and requests that a timely Notice of Allowance be issued in the application.

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Date

Respectfully submitted,



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